

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Ronald Rudolph Ernst,

Plaintiff,

VS.

Warden Timothy Schuetzle,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

Case No. 1:06-cv-036

On May 1, 2006, the petitioner, Ronald Rudolph Ernst, filed this petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. The Court ordered the Defendant to file a response. On May 21, 2007, the Defendant filed an answer to the petition and a motion to dismiss the petition. Magistrate Judge Charles S. Miller, Jr. reviewed Ernst's petition and the pleadings and submitted a Report and Recommendation. On June 28, 2007, Judge Miller recommended that the Defendant's motion to dismiss be granted and that Ernst's petition be denied. Ernst was given ten (10) days to file an objection to the Report and Recommendation and no objection has been filed to date.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 34) in its entirety and **GRANTS** the Defendant's motion to dismiss (Docket No. 29) and **DISMISSES** Ernst's Petition Under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody (Docket No. 1). The Court certifies that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis. The Court further certifies that Ernst has failed to make a substantial showing of the denial of a constitutional right and will not grant a certificate of appealability.

IT IS SO ORDERED.

Dated this 19th day of July, 2007.

/s/ *Daniel L. Hovland*

Daniel L. Hovland, Chief Judge
United States District Court